

**PLANNING COMMISSION  
REVISED AGENDA  
February 19, 2013 - 3:00 PM  
Council Chambers - Rouss City Hall**

**1. POINTS OF ORDER**

- A. Roll Call
- B. Approval of Minutes – January 15, 2013 regular meeting
- C. Correspondence
- D. Citizen Comments
- E. Report of Frederick Co Planning Commission Liaison

**2. PUBLIC HEARINGS**

- A. **CU-13-15** Request of Benjamin Pelletier on behalf of Shenandoah Personal Communications, LLC for a conditional use permit to upgrade existing telecommunications facilities with additional antennas and a microwave dish at 799 Fairmont Avenue (*Map Number 153-01- -2*) zoned Limited Industrial (M-1) District. (**Mr. Grisdale**)
- B. **TA-13-35** AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS, OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES (**Mr. Moore**)

**3. OLD BUSINESS**

- A. **RZ-12-405** AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY. The Comprehensive Plan calls for Commerce Revitalization/Infill in this area and for the connection of Stoneleigh Drive to Cedar Creek Grade. PUD overlay allows for consideration of up to 18 dwelling units per acre. (**Mr. Youmans**) - *The public hearing was closed and decision tabled at the October 16, 2012 meeting. Decision was tabled at applicant's request at the November 20 and December 18, 2012 meetings and tabled by the Commission at the January 15, 2013 meeting.*

**4. NEW BUSINESS**

- A. Administrative Approval(s):
  - 1) **SP-13-56**    443 N Loudoun St    William Hutchinson    multifamily conversion

**5. ADJOURN**

**CU-13-15** Request of Benjamin Pelletier on behalf of Shenandoah Personal Communications, LLC for a conditional use permit to upgrade existing telecommunications facilities with an additional antennas and a microwave dish at 799 Fairmont Avenue (*Map Number 153-01- -2*) zoned Limited Industrial (M-1) District.

---

#### REQUEST DESCRIPTION

The applicant is proposing to remove six existing antennas and replace with nine new antennas as well add a microwave antenna as part of an upgrade of existing telecommunications facilities at the tower located on the National Fruit property at 799 Fairmont Avenue.

#### AREA DESCRIPTION

The existing tower is located in a wooded area in the northwest portion of the ±68 acre, M-1 zoned National Fruit Product Company industrial property. Land to the east is also zoned M-1 and includes the migrant worker camp and some single family residences along the west side of Fairmont Ave. Land to the west is zoned LR and is vacant. Land further to the southwest includes an M-1 zoned City water tank and an LR zoned single family residence. Land directly to the north is located in Frederick County and includes vacant land in the Rural Area (RA) and Residential Performance (RP) Districts.



#### STAFF COMMENTS

The applicant's proposal involves the removal of six existing antennas and the installation of nine new antennas along with a microwave dish on behalf of Shentel Communications on the existing 182' lattice tower located on the National Fruit parcel. The equipment will be installed at an elevation of 164'.

Collocation of antennas on existing structures as proposed is encouraged within the Zoning Ordinance. The three existing equipment cabinets at the base of the tower would be retrofitted, and a new fiber distribution box and cables will also be installed. Shentel's engineer has submitted a preliminary certification that the proposed new antennas will not exceed the radio frequency emission standards established by the Federal Government.

#### RECOMMENDATION

The Director of Zoning and Inspections recommends approval of the request with conditions.

For a conditional use permit to be approved, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood.

A favorable motion could read:

**MOVE** the Commission forward **CU-13-15** to Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:

1. Submit an as-built emissions certification after the facility is in operation;
2. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use;
3. Submit a bond guaranteeing removal of facilities should the use cease.

OR

An unfavorable recommendation from the Planning Commission to City Council should cite the reasons why the proposal as submitted or modified could negatively impact the health, safety or welfare of those residing or working in the area and/or why it would be detrimental to public welfare or damaging to property or improvements in the neighborhood.



January 10, 2013

City of Winchester  
Department of Zoning and Inspections  
15 N. Cameron St  
Winchester, Virginia 22601



**RE:** Conditional Use Permit  
799 Fairmont Ave  
Winchester, VA 22601

**Site Name:** 021 – Winchester

**Applicant:**

Shenandoah Personal Communications, LLC (Hereafter referred to as "Shentel.")  
500 Shentel Way, PO Box 459  
Edinburg, Virginia 22824

**Applicant's Agent:**

Benjamin Pelletier  
7380 Coca Cola Drive, Suite 106  
Hanover, 21076

**Description of Intent**

Shentel is requesting to amend existing conditions, per Section 18-2-1 of the Zoning Ordinance, on an existing telecommunications site located within an M1, or Limited Industrial District. Shentel is in the process of upgrading its core network, including all cell sites, in preparation for its 4G long term evolution (LTE) service launch. These upgrades will allow Shentel to provide 4G LTE wireless data services as well as help to improve its current 3G data and voice coverage. As this is a complete change in antennas and equipment at this location, a new conditional use permit would be required.

**Proposed Scope of Work**

The six existing panel antennas mounted to the pre-existing lattice tower shall be removed and replaced with nine new panel antennas of similar size. One new microwave dish antenna will also be installed. The new antennas are shown at an elevation of 164 feet; the same height as the existing Shentel antennas. The three existing equipment cabinets located at the base of the tower would be retrofitted, and a new fiber distribution box and cables would be installed.

7380 Coca Cola Dr., Suite 106

Hanover, MD

1 21076

(410) 712-7092

FAX (410)712-4056



#### **18-2-1 CONDITIONAL USE PERMIT**

**18-2-1.** Conditional use permits may be granted by the City Council for any of the uses for which a permit is required by the provisions of this Ordinance. In granting any such use permit, the City Council may impose any such conditions in connection therewith as will assure that it will conform with the requirements contained herein and will continue to do so, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. A conditional use permit shall not be issued unless the City Council shall find that:

a. The proposal as submitted or as modified will not affect adversely the health, safety, or welfare of persons residing or working in the neighborhood of the proposed use; and will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood. Among matters to be considered in this connection are traffic congestion, noise, lights, dust, odor, fumes, and vibration, with due regard for timing of operation, screening, and other matters which might be regulated to mitigate adverse impact.

*Proposal is consistent.*

b. The proposal as submitted or modified will conform to the Comprehensive Plan, or to specific elements of such plan, and the official policies adopted in relation thereto, including the purposes and the expressed intent of this Ordinance.

*Proposal is consistent.*

**18-2-1.2** Proposals for transmitting and receiving facilities and towers for cellular communications systems and similar communications systems shall demonstrate the following:

a. All possible means for sharing space on existing towers or on existing buildings or other structures have been exhausted and no alternative other than constructing a new tower exists, and if a new tower is proposed, the applicant has executed a Letter of Intent to share space on their tower and negotiate in good faith with other interested parties.

*Existing site is located on an existing tower.*





- b. The height of any tower is no more than the minimum to accomplish required coverage and any new tower is separated from property lines in a residential district by not less than the height of the tower. In no case shall any tower exceed 75 feet in height in a LR, MR, HR, RO-1, RB-1 or HS Districts, nor 100 feet in the B-1, B-2, CM-1, PC, MC or HE-1 Districts, nor 200 feet in the M-1 or M-2 Districts.

*Existing tower is at 182'.*

- c. The tower construction is of a design which minimizes the visual impact and the tower and other facilities have been camouflaged and/or screened from adjacent properties and rights of way to the maximum extent practicable. To this end, the proposal must provide for retention of existing stands of trees and the installation of screening where existing trees do not mitigate the visual impact of the facility. Such screening must, at a minimum, meet the requirements of Section 19-5-6.4d of this Ordinance. The Planning Commission may recommend and the City Council may require additional trees and screening when the minimum provisions do not mitigate adverse visual impacts of the facility.

*N/A – Existing site; base station screened by existing fence*

- d. The electromagnetic fields do not exceed the radio frequency emission standards established by the American National Standards Institute or issued by the Federal Government subsequent to the adoption of this Ordinance.

*Proposal is consistent.*

#### **18-2-3 PROCEDURES.**

- 18-2-3.1** The procedures governing the application for and the granting of conditional use permit where required by this Ordinance shall be as follows:

- 18-2-3.2** The applicant, who shall be a record owner, or contract owner with written approval of the owner, of the land involved (if a contract owner, copy of said contract shall be filed with and made a part of application), shall make application for the use permit to the Administrator on the form provided for that purpose, giving all information required by such form, including such other information which the Administrator may deem necessary for an intelligent consideration of the project for which a permit is desired. The application shall be accompanied by the fee as per Section 23-8, evidence of delinquent tax payment per Section 23-9, and disclosure of real party



interest per Section 23-10 of this Ordinance and seven (7) copies of the following:

- 18-2-3.3** A site plan in accordance with Article 19 of this Ordinance.  
*See attached Site Plan, included in drawings, dated 1/10/13.*
- 18-2-3.4** The front, side, and rear elevations and floor plans of the proposed buildings.  
*See attached drawings dated 01/10/13, showing existing tower elevation.*
- 18-2-3.5** Public Notice and Hearing. The Administrator shall submit the conditional use permit application and copies of the site plan to the Commission, which shall make a recommendation to City Council which shall approve, approve with conditions, or deny the application. No such use permits shall be considered by the Commission or the Council except after notice and hearing as per Section 23-7-1 of this Ordinance. Written notice shall be provided per Section 23-7-2 of this Ordinance for both the Commission and City Council hearings.  
*Shentel will comply.*
- 18-2-3.6** Notification Signs. For the hearing by both the Commission and City Council, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance.  
*Shentel will comply.*
- 18-2-3.7** Upon the granting of a use permit, one (1) copy of the site plan, upon which has been indicated the changes or restrictions, if any, required by the City Council or the Board of Zoning Appeals, shall be returned to the applicant, who may thereafter conduct the operations for which permits has been granted only in such manner and for such a time as the permit and the certified drawing shall specify. A use permit shall be valid for only the specific use it covers in the specific location designated.  
*Shentel understands and agrees to conditions.*
- 18-2-3.8** Expiration. Notwithstanding any specific provision of any condition imposed by City Council in conjunction with the granting of a Conditional Use Permit which may conflict with this general provision, a Conditional Use Permit shall expire immediately upon any of the following



**NETWORK BUILDING  
& CONSULTING, LLC**

occurrences: a) the use does not commence within one year of approval; b) the use ceases for more than one year; or, c) the use changes to another use allowed in the district. In cases where government action impedes reasonable operation of the use, these provisions shall not include the duration of such restrictions. Where permits are granted for portions of a site and/or structure, the expiration shall apply to just that portion of the site and/or structure.

*Shentel understands and agrees to conditions.*

**18-2-3.9** **Revocation By City Council.** If the applicant or successor fails to comply with any conditions imposed by City Council per Section 18-2-1.1, City Council may, in accordance with §15.2-2286, Code of Virginia, et seq., either amend or revoke the Conditional Use Permit upon notification from the Administrator of such failure to comply. No such amendment or revocation shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance.

*Shentel understands and agrees to conditions.*

If you have any questions or need further information, please contact me at (757) 784-3671 or [bpelletier@nbcllc.com](mailto:bpelletier@nbcllc.com)

Most Respectfully,

Benjamin Pelletier  
Consultant for Shentel Communications  
Network Building & Consulting, LLC



**TA-13-35 AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS, OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES**

---

**REQUEST DESCRIPTION**

This publicly sponsored zoning text amendment is proposed to amend and clarify regulations pertaining to the use of sidewalks/public-right-of-way in the Primary and Secondary Downtown Assessment Districts and associated processes and fees for applying for such use.

**STAFF COMMENTS**

Currently, Section 18-7 of the Zoning Ordinance addresses use of sidewalks for outdoor cafes, signs, vendors, etc. in the Downtown Assessment Districts. Separately, Chapter 26, Article III, Division 2 of Winchester City Code addresses use of sidewalks for cafes on the Loudoun St Mall (the Primary Assessment District). As such, there are two different sets of regulations and processes outlined for outdoor cafes. Additionally, the existing regulations for use of public space in Section 18-7 of the Zoning Ordinance do not provide for protection from liability for the City via insurance requirements, do not outline associated fees for such use of public space, and generally lack sufficient detail to provide for consistent regulation and enforcement.

This proposed Ordinance, in conjunction with a separate Ordinance to repeal the existing language in Chapter 26, Article III, Division 2 of Winchester City Code, is intended to accomplish the following:

- Centralize regulations for use of public space in special assessment districts in 18-7 of the Zoning Ordinance.
- Establish an administrative permitting process through the Zoning Administrator, who will consult with others as necessary.
- Exempt cafes that comply with design guidelines recently adopted by the OTDB from separately applying for a Certificate of Appropriateness from the BAR. Those that do not comply with the adopted guidelines may still apply to the BAR for consideration.
- Clarify that nothing permitted for placement in public space can be attached to the Mall, sidewalks, or adjoining buildings.
- Clarify that Insurance and Hold Harmless Agreements apply to all uses in public space, not just cafes.
- Keeps all fees the same as current (evaluation and possible adjustment at some future point), with the exception of outside vendors who will be charged a fee of \$25 per day, rather than an annual fee of \$150.

**RECOMMENDATION**

The Old Town Development Board endorsed the revision to an administrative approval process at its January 3, 2013 meeting. The Downtown Manager recommended the migration to a “per day” fee for outside vendors.

A favorable motion could read

**MOVE** that the Commission forward **TA-13-35** as identified in “Draft 3 – 2/18/13” to City Council recommending approval because the amendments will clarify regulations and processes for use of public space in the Downtown Assessment Districts and provide for consistent regulation and enforcement of such use.

AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER  
ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS  
PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS,  
OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES  
**TA-13-35**

Draft 3 – 2/18/13

*Ed. Note: The following text represents excerpts of Sections 14-5, 18-15, 21-3 and 23-8 of the Zoning Ordinance that are subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

**ARTICLE 14**

**HISTORIC WINCHESTER DISTRICT - HW**

**SECTION 14-5. ADMINISTRATIVE REVIEW.**

14-5-1 Notwithstanding any contrary provision of this article, the Zoning Administrator may review, and may approve or deny, applications for Certificates of Appropriateness, in the following situations:

**14-5-1.6 Furniture, fixtures, planters, umbrellas, fencing, and any other appurtenant elements of outdoor dining areas that comply with the *Old Town Winchester Outdoor Dining Guidelines* as adopted by the Old Town Development Board.**

**14-5-1.7 Vending apparatuses permitted for outside vendors permitted in accordance with Section 18-7-5.**

**ARTICLE 18**

**GENERAL PROVISIONS**

**SECTION 18-15. OBSTRUCTION OF PUBLIC RIGHT-OF-WAY.**

**Unless explicitly permitted elsewhere in this Ordinance, no** ~~No~~ building, structure, sign, merchandise, or other obstruction shall be located or conducted on any public right-of-way.

## ARTICLE 21

### VIOLATION AND PENALTY

#### 21-3 Civil Penalties

- A. Any violation of the following provisions of this Ordinance shall be subject to a civil penalty of two hundred dollars (\$200.00) for the first violation, and a civil penalty of five hundred dollars (\$500.00) for each subsequent violation arising from the same set of operative facts. Any person, firm, or corporation, whether as principal, agent, employed or otherwise who receives more than three civil penalties of the same nature but with different operative facts, the violation may be criminally prosecuted under Section 21-2 of this Ordinance.
- 5) The operation of a business and special regulations pertaining to the ~~Loudoun Street Mall and the~~ **Primary and** Secondary Downtown Assessment Districts, in violation of Section 18-7, specifically Subsections 18-7-1, 18-7-1.1, ~~18-7-1.2, 18-7-1.3, 18-7-1.4, 18-7-1.5, 18-7-3, 18-7-4, or 18-7-5~~ **or 18-7-1.6.**

## ARTICLE 23

### ADMINISTRATION AND INTERPRETATION

#### SECTION 23-8. FEES.

##### **23-8-18 Use of sidewalk in Primary/Secondary Assessment Districts per Section 18-7 (annual fees, unless otherwise specified)**

<u>Dining Area – up to 500sf</u>	<u>\$85</u>
<u>Dining Area – 501 to 650sf</u>	<u>\$160</u>
<u>Dining Area – 651sf and greater</u>	<u>\$210</u>
<u>Portable sign</u>	<u>\$10</u>
<u>Display of Merchandise</u>	<u>\$25</u>
<u>Outside vendor</u>	<u>\$25/day</u>

*Ed. Note: The following text represents a complete rewrite of Article 18-7 of the Zoning Ordinance. All existing language in Section 18-7 is hereby repealed and replaced with the following text:*

## **ARTICLE 18**

### **GENERAL PROVISIONS**

#### **SECTION 18-7        SPECIAL REGULATIONS PERTAINING TO THE PRIMARY AND SECONDARY DOWNTOWN ASSESSMENT DISTRICTS.**

- 18-7-1        **USE OF SIDEWALKS.** The sidewalks in the Primary and Secondary Downtown Assessment Districts, as defined in Section [25-1](#) of the Winchester City Code, may be used by proprietors, owners, or tenants of businesses abutting the sidewalks, or outside vendors, subject to the provisions within this Section.
- 18-7-1.1      Permit Required. Any person or business using the sidewalks in the Primary and Secondary Downtown Assessment Districts must first obtain a permit from the Administrator. The Administrator may consult with the Downtown Manager, Old Town Development Board, Board of Architectural Review, the Commissioner of the Revenue, Health Department, or any other such agencies deemed necessary prior to approving or denying the issuance of such permit, and may impose conditions upon the applicant which are deemed necessary to protect the Mall surface, sidewalks, street furniture, and appurtenances.
- 18-7-1.2      Insurance. The applicant for any such permit shall provide a Certificate of Insurance, which shall be currently maintained throughout the term of the permit, indicating that the City is an additional insured on a policy of liability insurance issued to the applicant by an insurance company licensed to do business in Virginia with a single limit of not less than \$1,000,000.
- 18-7-1.3      Hold Harmless Agreement. The applicant for such permit shall provide a signed agreement, on a form approved by the City Attorney, in which the applicant agrees to hold the City, its officers, agents, and employees, harmless from any claims for damages to person or property growing out of any activity with the applicant's activities conducted in connection with the permit herein described or caused by the operation or location of the activity on the City's property.
- 18-7-1.4      Fee. A fee per Section [23-8-18](#) is required upon issuance of any such permit.
- 18-7-1.5      Duration. Any such permit issued shall be non-transferable and, shall be valid from January 1 through December 31 of each year, or for any part thereof. The application fee will remain the same regardless of the date received, and the fee will not be refunded or prorated based on the date of the application. Upon

expiration or revocation of any such permit, the applicant must apply for a new permit to continue using the sidewalk.

- 18-7-1.6 Certificate of Appropriateness. All furniture, signs and other appurtenant elements to be used on the sidewalks must receive a Certificate of Appropriateness per Article [14](#). For items subject to Administrative Review per Section 14-5, the permit application shall concurrently serve as application for the Certificate of Appropriateness.
- 18-7-1.7 Area Available for Use.
- a. Width. For businesses abutting the sidewalk, use of the sidewalk shall not exceed the width of the individual store front.
  - b. Depth.
    - 1) Primary Downtown Assessment District. No sidewalk area extending more than fifteen (15) from the abutting storefront toward the center line of Mall shall be used. However, in all cases, no use of area within a designated fire lane shall be permitted.
    - 2) Secondary Downtown Assessment District. No sidewalk area closer than five (5) feet to the curb shall be used. However, in all cases, a minimum clear path of travel of three (3) feet must be provided.
  - c. Outside Vendors. Availability of space to be determined in consultation with the Downtown Manager and in consideration of, but not limited to, the following factors: proximity to existing storefronts or doors; proximity to businesses trading in similar goods/services; ability to provide safe and convenient passage for passersby; and scheduled events.
- 18-7-1.8 Revocation of Permits. The Administrator may revoke any permit specified in this Section if it is determined that the conditions therein have not been met by the applicant.
- 18-7-2 **OUTDOOR DINING AREA.** As used herein, “outdoor dining area” shall mean any group of tables, chairs, benches, and suitable devices maintained for the purpose of sale and/or consumption of food, refreshments, and beverages of all kinds as an extension of a restaurant licensed under the Regulations of the Virginia Department of Health. Applicants for outdoor dining areas are encouraged to review the *Old Town Winchester Outdoor Dining Guidelines* as adopted by the Old Town Development Board.
- 18-7-2.1 In addition to the requirements in Section 18-7-1, applicants for an outdoor dining area must also submit:
- a. Health License. Evidence showing that the applicant has obtained a license to operate as a restaurant from the Virginia Department of Health. Such license shall be currently maintained throughout the term of the permit.



- b. ABC License. If alcoholic beverages are to be sold by the applicant, evidence that the applicant has a valid license for same issued by the Virginia Alcoholic Beverage Control Board, and that it specifically meets that Board's requirements for "outside terraces or patio dining area". Such license shall be currently maintained throughout the term of the permit.
- c. Site Sketch. A scaled plan indicating the location of the proposed dining area, the layout of tables, chairs, enclosure, etc. and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area.
- d. Details. Details clearly indicating the materials, color, and construction of the enclosure, furniture, and all appurtenant elements. Such details must include the methods in which the enclosure shall be supported. No enclosure or other elements shall be fastened to the sidewalk or adjoining buildings.

18-7-2.2 As a condition of obtaining and keeping a permit for an outdoor dining area, the applicant is deemed to have agreed to the following terms and conditions:

- a. All outdoor dining areas will be of such design so as to be easily removed for special events, snow removal, emergency access, or other circumstances which require that the sidewalks be cleared of all such dining areas, as determined by City Council or by the Chief of Police. A directive from the Chief of Police or the City Council to clear the area of all furniture, fixtures, decorations, etc., connected with the café operation shall be promptly complied with by the restaurant without question and without unnecessary delay, and the area shall remain cleared of such material until directed otherwise by City Council or the Chief of Police.
- b. The entire area delineated for the outdoor dining area must be maintained in a neat and orderly fashion, whether or not the area is actually in use. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. All food shall be provided by waiter or waitress service, unless self-service operations are approved as a part of the permit. Extensions or enlargements of the area delineated beyond those described in the restaurant's application are expressly prohibited.
- c. All furniture, fixtures, enclosures, and all appurtenant elements shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance.
- d. The outdoor dining area shall operate only when the restaurant to which a permit has been issued is allowed to operate. In addition, the restaurant shall be responsible to see to it that patrons violate no laws of the Commonwealth or Ordinances of the City, to expressly include the City's Noise Ordinance. A business holding a permit shall have the right to limit access and occupancy to only bona fide paying customers, and shall have the same right to deny access or service in the outdoor dining area as it enjoys in its own premises,

provided, however, that no person shall be denied access or service purely on the basis of race, religion, national origin, sex, age or physical disability.

- 18-7-3      **PORTABLE SIGN.** Portable signs shall not exceed six (6) square feet in area. Applicants for portable signs are encouraged to review the [\*Winchester Historic District Design Guidelines\*](#) as published by the Board of Architectural Review.
- 18-7-3.1    In addition to the requirements in Section 18-7-1, applicants for portable signs must also submit:
- a. Site Sketch. A scaled plan indicating the location of the proposed sign and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such sign generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.
  - b. Details. Details clearly indicating the dimensions, materials, color, construction, etc. of the sign. Such details must include the method in which the sign shall be supported. No portable sign shall be fastened to the sidewalk or adjoining buildings.
- 18-7-4      **DISPLAY OF MERCHANDISE.** Businesses abutting sidewalks may apply to use such areas for the display of merchandise for the purpose of attracting customers into such businesses, and not expressly for the sale of such items on display. Such displays shall incorporate, or be representative of, merchandise that is regularly sold as part of the business.
- 18-7-4.1    In addition to the requirements in Section 18-7-1, applicants for display of merchandise must also submit:
- a. Site Sketch. A scaled plan indicating the location of the proposed display and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such display generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.
  - b. Details. Details clearly indicating the materials, color, construction, etc. of any racks, tables, or other appurtenant elements which shall be used to display merchandise. Such details must include the methods in which the display elements shall be supported. No elements shall be fastened to the sidewalk or adjoining buildings.
  - c. Schedule for display. A description of the days, hours, and frequency of outdoor display.

18-7-5 **OUTSIDE VENDORS.** Vendors without an adjoining storefront and operating from carts or other portable vending apparatuses may apply for a permit to use sidewalk area in the Primary and Secondary Downtown Assessment Districts. As there are limited areas for such vendors to locate without conflicting with existing storefronts, all such vendors shall schedule a pre-application meeting with the Administrator and Downtown Manager to discuss the pending application. No such permit shall be issued unless it is determined that the design of the vending apparatus and its proposed use is compatible with the design and character of the District and shall be issued only for the vending of food and beverages, flowers, arts and crafts, handicrafts, and similar products and services.

18-7-5.1 In addition to the requirements in Section 18-7-1, applicants for permits as outside vendors must also submit:

- a. Health License. For food and beverage vendors, evidence showing that the applicant has obtained a license to operate as such from the Virginia Department of Health. Such license shall be currently maintained throughout the term of the permit.
- b. Site Sketch. A scaled plan indicating the location of the proposed vending apparatus and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such apparatus generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.
- c. Details. Details clearly indicating the materials, color, construction, etc. of the vending apparatus and any other appurtenant elements which shall be used. Such details must include the methods in which the apparatus shall be supported. No apparatus or appurtenant elements shall be fastened to the sidewalk or adjoining buildings.
- d. Schedule for vending. A detailed description of the specific dates and hours of vending proposed. Outside vendor fees will be determined based on the proposed schedule and shall not be refunded due to non-use of approved dates for any reason.

18-7-5.2 As a condition of obtaining and keeping a permit as an outside vendor, the applicant is deemed to have agreed to the following terms and conditions:

- a. The entire area delineated for the vending must be maintained in a neat and orderly fashion. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. Extensions or enlargements of the area delineated beyond those described in the application are expressly prohibited.

- b. The vending apparatus and all appurtenant elements shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance.
- c. The vendor may be moved from time to time or use prohibited at the discretion of the Administrator or Downtown Manager due to scheduled promotions or other special events being held in the District.

18-7-6

**SPECIAL EVENTS.** Special Events in the Primary and Secondary Downtown Assessment Districts shall be governed by the provisions of [Chapter 14, Article IX](#) of Winchester City Code.

**RZ-12-405 AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY**

---

**REQUEST DESCRIPTION**

The request is to change the underlying zoning of a large tract of mostly vacant land at the western limits of the City along the north side of Cedar Creek Grade from RO-1 to HR subject to proffers. While it keeps the Corridor Enhancement (CE) overlay zoning in place, it proposes to add Planned Unit Development (PUD) overlay zoning as well. The HR rezoning would permit the construction of up to 139 apartment units, assuming that the overlay Planned Unit Development (PUD) provisions and Corridor Enhancement (CE) provisions are met. The applicant has provided an updated Conceptual Site Layout Plan dated December 3, 2012 depicting 132 apartment units in seven three-story buildings and 3 four-story buildings. A separate building housing management and maintenance offices as well as recreational amenities is proposed out close to Cedar Creek Grade along with a combination tennis/basketball court. The outdoor recreational facility and adjoining open space, which was originally proposed for conveyance to the City as public parkland, would remain private with an easement granted to the City for public use.

**AREA DESCRIPTION**

The subject parcel contains a vacant single-family residence and some agricultural structures. This parcel and one residentially used property immediately to the east comprise an existing RO-1 district. Along with numerous other properties throughout the City, these two properties were rezoned by the City (i.e. not at property owner request) in the 1990's in an effort to stem what was then viewed as undesirable multifamily rental housing. Land to the north and further to the east is zoned HR and contains multifamily development as well as townhouse development. Land to the south fronting along Cedar Creek Grade is also zoned HR and contains single-family residences.



Land to the west is situated in Frederick County. The adjoining Frederick County parcel owned by Greystone Properties, LLC was conditionally rezoned from Rural Areas (RA) to Residential Planned Community (R4) by Frederick County along with other properties including a larger tract owned by Miller & Smith about five years ago. The 360-acre Willow Run project is slated for 1,390 residential units as well as 36 acres of commercial uses. The Greystone Properties portion of the larger Willow Run project is primarily single-family attached (i.e. townhouse) residential and age-restricted housing. It includes a spine road (Birchmont Dr) that connects Cedar Creek Grade with the extension of Jubal Early Drive to the north. That connection is required to be built prior to the 200th residential permit being issued. A public street connection to Cidermill Lane from the County spine road is also part of the approved Willow Run project. Cidermill Lane is currently being extended to the County line as part of the last phase of the Orchard Hill townhouse development.



## COMMENTS FROM STAFF

An incomplete request was first presented at a public hearing by the Planning Commission on October 16, 2012. The matter was tabled at the applicant's request during the November and December 2012 regular meetings of the Commission pending a traffic impact study. The applicant had requested that the Planning Commission public hearing be delayed from September 2012 until October of 2012 so that additional information could be provided to the City with respect to potential impacts caused by school-aged population generated from developments where there are two- and three-bedroom units. That information was subsequently provided to the Planning Director via email from Mr. Thomas Moore Lawson, on behalf of the applicant as an enclosure with a September 21, 2012 email. A more complete fiscal analysis dated January 10, 2013 was received by the Planning Director on January 14, 2013 and provided to the Planning Commission for consideration at the January 15, 2013 Commission meeting.

In a letter to the Planning Director dated August 15, 2012, Mr. Bob Cocker, Manager for the applicant (Valley View Management, LLC) explains the proposed rezoning and the proposed Racy Meadows Apartment Complex project. The applicant also provided an original Proffer Statement dated August 16, 2012 which is addressed further below in the comments from staff. An updated Proffer Statement dated January 9, 2013 was received via email on January 15, 2013 (the same day as the January Commission meeting) and considered by the Commission on that date. Along with the updated Proffer Statement, an updated exhibit dated 12/3/12 (but received by the City on January 14, 2013) titled 'CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit "A"' was also submitted. It superseded the original rezoning exhibit titled 'OVERALL SITE PLAN, CONCEPTUAL LAYOUT and TRAFFIC PATTERN PLAN,' dated 8/6/12.

### Comprehensive Plan Consistency

The Character Map contained in the adopted Comprehensive Plan calls for a Commerce Revitalization/Infill in this area and for the connection of Stoneleigh Drive to Cedar Creek Grade. PUD overlay allows for consideration of up to 18 dwelling units per acre, which in the case of 7.74 acres would translate to a maximum of 139 dwelling units. The applicant is proposing 132 dwelling units in addition to a building housing management offices and common recreational amenities. The Comprehensive Plan also calls for increased multifamily development citywide to attract young professionals and empty nesters. The proposed upscale apartments would serve these targeted populations.

The Cedar Creek Grade corridor has undergone considerable change over the past 25 years from being primarily single-family development along a two-lane roadway to becoming a mixed use corridor served by a four-lane arterial. A number of sites that were rezoned to RO-1 by the City in the 1990's were subsequently rezoned on a conditional basis to Highway Commercial (B-2) by private developers. These conditional B-2 rezonings often included restrictions on commercial uses. This effort includes the two lots along the south side of Cedar Creek Grade across from the east end of the subject Racy property where two large office buildings are situated today. Corridor Enhancement (CE) overlay zoning was established along Cedar Creek Grade in 2006.

### Potential Impacts & Proffers

The proposal is a conditional rezoning request wherein the applicant has voluntarily submitted proffers to mitigate potential impacts arising from the rezoning of the property from HR to HR (PUD). The original August 6, 2012 Proffer Statement was structured to address six areas under the heading of Site Planning Improvements. These were: Street and Access Improvements; Interior Site Circulation; Site Development; Landscaping and Design; Recreation; and, Stormwater Management. The last paragraph of the Proffer Statement bound the developer to develop the site in accordance with the Conceptual Site Layout Plan, Rezoning Exhibit "A" dated August 6, 2012. The revised Proffer Statement dated January 9,

2012 added two more headings which were: Density; and Phasing. The information pertaining to Density was still incomplete as it pertained to Percentages for building coverage and open space.

At the October 16, 2012 meeting, the applicant was asked by the Planning Commission to conduct a Fiscal Impact Analysis and a Traffic Impact Analysis which are two studies that can be required by the Planning Commission for a PUD rezoning application per Sections 13-4-2.2k and l of the Zoning Ordinance.

#### Fiscal Impact Analysis

The multifamily (i.e. non-commercial) project, from a land use perspective, is inconsistent with the adopted Comprehensive Plan. As noted above, the Commission requested a Fiscal Impact Analysis showing the impacts on City revenue and expenditures generated by the project as compared to revenue and expenditures arising from development allowed under the current RO-1 development. While the current RO-1 zoning permits office development which generates no school-aged population, it also permits single-family residential homes at a density of 4.3 units per acre which is between the current LR and MR residential district densities. Single-family homes tend to generate more school-aged population than multifamily units, but there would be many fewer single-family homes possible under the current RO-1 zoning than possible under the proposed HR zoning.

The proposed conditional HR(PUD) zoning would permit no commercial office development, but would instead yield 132 apartment units, primarily consisting of two-bedroom units. However, the applicant is asking that some of the units be allowed to have three bedrooms, which might increase the likelihood of school-aged population. The additional support material provided by Mr. Lawson on behalf of the applicant notes that the 300 units of similar apartment development in Stuart Hill (180 units) and Pemberton Village (120 units) only generate 4 elementary students, 1 middle school student, and 4 high school students. This was determined based upon students picked up at City school bus stops serving these developments. It is possible that some students are transported to the public schools by other means.

The Commission requested that the City's Economic Redevelopment Director review the proposal and comment on the fiscal impacts associated with changing the zoning from the current RO-1 which would support general and medical office development to instead have all HR (PUD) zoning that would specifically consist of 132 apartment units and no commercial development. In the attached memo to the Planning Director dated February 10, 2013, Mr. Deskins suggests that a more economically viable development scenario would be to retain zoning supporting commercial development such as offices on a two acre portion of the site out along Cedar Creek Grade while allowing the remaining 5.75 acres to be rezoned to HR(PUD) for the development of 120 apartment units. The two acres of RO-1 or B-2 zoned land out front could support upwards of 30,000 square feet of development which would generate BPOL and/or Sales tax revenue for the City in the range of \$15K-\$50K and greatly help offset any expenditures arising from the residential development on the rear of the tract (SEE ATTACHED).

#### Traffic Impact Analysis

At the October 16, 2012 meeting, the Commission also required a Traffic Impact Analysis. This is appropriate given the close proximity to the Frederick County corporate limits where VDOT has authority to require review of rezonings that create a certain threshold of additional traffic above that generated by the current zoning. A Traffic Signal Warrant Study dated 12/4/12 was submitted on 12/10/12 to the Planning Director and to the Public Services Director, Perry Eisenach. The Warrant Study concluded that a traffic signal would not be warranted at the proposed intersection of Cedar Creek Grade and the extension of Stoneleigh Drive, even if situated opposite of the existing Cedar Creek Grade/Stone Ridge Rd intersection. The Public Services Director reviewed the study and agreed with the findings.

The Traffic Signal Warrant Study included an analysis of Trip Generation based upon four different Development Scenarios. The figures are contained in Table 1 on page 6 of the Study (See attached Table 1). The proposed scenario, calling for 132 apartment units, would generate 94 trips in the PM Peak Hour and an Average Daily Traffic (ADT) volume of 980 trips. If the 7.74 acres were instead developed with by-right office development consisting of upwards of 120,000 square feet of medical-dental office development, then it would generate 424 trips in the PM Peak Hour and an ADT volume of 4,692 trips (about 4.8 times the amount of traffic generated by the development proposed with the rezoning). If the site was rezoned to HR District without the proposed PUD overlay zoning, then it would support upwards of 108 multifamily units. This development would generate 77 trips in the PM Peak Hour and an ADT volume of 799 trips. Staff has not observed problems at intersections such as Harvest Drive and W. Jubal Early Dr where considerably larger numbers of apartments, retirement cottages, assisted living, and conventional single-family units are linked to major streets in the City.

Based upon the updated Development Plan, the development is now proposed to include a private extension of Stoneleigh Drive connecting with another private drive that then intersects Cedar Creek Grade at an unsignalized intersection located approximately 240 feet west of the Harvest Drive intersection. This new location is where the existing driveway into the adjoining Horton property is currently located. That driveway would be eliminated under the proposal and a connection to the Horton property would be provided from a point internal to the Racey Meadows development north of the existing Horton residence closest to Cedar Creek Grade. The original Development Plan aligned the private extension of Stoneleigh Drive with Stoneridge Rd providing access to the Harvest Ridge residential development on the south side of Cedar Creek Grade.

The revised street location reduces impacts on the Harvest Drive neighborhood and provides for a less direct connection to the public portion of Stoneleigh Drive in the Orchard Hill neighborhood. It also provides for improved sight distance to the west as compared with the previous alignment. It will, however, require the granting of an exception by City Council to allow for the new private street to be situated within 300 feet of the existing Harvest Drive intersection. The Commission may wish to ask for additional study of how the addition of this 3-way intersection would impact traffic flow in the area. At a minimum, a dedicated left-turn lane eastbound should be constructed.

Alterations were made to traffic flow on Cedar Creek Grade at Stoneridge Rd intersection after VDOT had widened the road from two lanes to four lanes in 1993. The alteration decreased the capacity of Cedar Creek Grade by converting one of the two eastbound lanes and one of the two westbound lanes approaching Stoneridge Rd into right-turn and left-turn lanes respectively. That change essentially reduced Cedar Creek Grade down to a single through lane eastbound and westbound at that one location.

The applicant is proffering to extend a private roadway northward to connect with another private roadway internal to the apartment development. It would also connect to the privately-owned portion of Stoneleigh Drive serving the existing Summerfield Apartment development. Summerfield Apartments were approved with improved access only to the north connecting with the public portion of Stoneleigh Dr in the Orchard Hill townhouse development. The developer of the Summerfield Apartment development offered to extend Stoneleigh Drive as a public street southward to allow for an orderly extension of that street ultimately to Cedar Creek Grade once the Racey property was developed. Due to strong opposition from adjoining Orchard Hill residents, City Council turned down a subdivision proposal in 1997 that would have extended the public street, but the apartment development site plan was nonetheless approved relying solely upon access to Harvest Drive, a Category II Collector Street via local (Category I) streets within the Orchard Hill development.

As noted above, the Comprehensive Plan calls for the orderly extension of roadway connecting the Summerfield and Orchard Hill neighborhoods to Cedar Creek Grade. This allows for improved traffic

flow and improved service delivery for City services such as fire and rescue, police, school buses, and refuse, yard waste, and recycling pickup. It also implements the New Urbanism principle of an interconnected grid street network advocated in the Comprehensive Plan and avoids undesirably long an inefficient single-access point development typical of 1960's – 1990's suburban sprawl. Total traffic on any one street is reduced since residents do not have to drive through other neighborhoods to get to the major streets in the City. The applicant is also proffering traffic calming measures along the proposed private roadway.

#### Site Development and Buffering

The updated Conceptual Site Layout Plan depicts 132 apartment units in seven three-story buildings and 3 four-story buildings. Proffers #3 & 4 address Site Development as well as Landscaping and Design. Two of the 3 four-story buildings would back up to the Summerfield Apartment development along the northern boundary furthest from Cedar Creek Grade. The third four-story structure is located along the west side of Stoneleigh Dr. Per the proffered layout, all of the buildings would be situated at least 25 feet away from any exterior property line and at least 50 feet away from Cedar Creek Grade. The closest apartment building is now 135 feet away from Cedar Creek Grade. Proffer #3 provides detailed information about separations between buildings on the site. Proffer #4 provides detailed information about the landscaped buffers, including the quantity of evergreen and deciduous trees required. Staff would encourage the applicant to be more specific about the extent of upright evergreen screening of the two buildings backing up to the Horton property to the east.

#### Recreation and Open Space

Proffer #5 addresses recreational amenities and open space. The applicant is proposing combination basketball court and tennis court situated out close to Cedar Creek Grade just west of the building that would house management offices as well as some indoor recreation use. Since the facility overlaps, it can only be used at one time as either a half-court basketball facility or a tennis court- not both. A single facility for a multifamily development of this size is on the low end of facilities provided per dwelling unit. The applicant should clarify what additional active recreational amenities are proposed in the community building or elsewhere within the development.

The proffers and the plan also call for an 8-foot wide asphalt trail extending through the active recreational area out along Cedar Creek Grade. The revised layout provides for a longer continuous segment of multipurpose trail west of the private street intersection. The applicant is no longer proposing to convey any recreation amenities to the Winchester Parks & Recreation Department (WP&RD) to become a part of a citywide satellite park system. The proffer has been reworded to have the facilities remain with the property owner and have an easement granted for public use of the facilities.

#### Stormwater Management

Proffer #6 addresses the impacts of stormwater management and the applicant's measures to mitigate the potential impacts. A detailed stormwater analysis would be generated by the applicant and reviewed by the City at the time of site plan. It is intuitive that the applicant's proposed layout which, in many places, calls for a 75-foot wide green buffer at the low end of the site adjoining Cedar Creek Grade is superior to any plan allowed by right under current zoning that would permit impervious coverage consisting of office buildings and parking lots situated as close as 35 feet of the public right of way line.

#### Density

The updated Proffer Statement includes a breakdown by bedroom count. The applicant proposes 72 one-bedroom units, 42 two-bedroom units, and 18 three-bedroom units. The actual project density is not specifically stated in the proffer, but it comes out to 17 units per acre where 18 units per acre is the absolute maximum permissible under PUD zoning.

### Project Phasing

The applicant has indicated that there is no proposal to phase in the project as part of the PUD rezoning. A note on the Development Plan states: “No Phasing Applies. The Project Shall be Constructed Fourteen (14) Consecutive Months.” If the applicant proposes to obtain occupancy of any of the units prior to the entire development being completed, then that should be noted as required per Section 13-4-2.2h. The phasing plan should clearly note the timing of the roadway connection to Summerfield Apartments and the completion of the recreational amenities relative to occupancies of any units.

### Other Issues

The applicant has now addressed most if not all of the requirements for a complete PUD proposal as spelled out in Section 13-4 of the Zoning Ordinance. Among the Development Plan requirements are the following:

- Topographic Map
- Land Use plan showing the height of structures
- Width of all streets, driveways and loading areas
- Approximate location of existing and proposed utilities
- A plan or statement detailing covenants, restrictions, and conditions pertaining to the use, maintenance and operation of common spaces
- Percentage of the Total Tract used as Open Space, and,
- A plan or report indicating the extent and timing of all off-site improvements

The Commission has requested more complete information pertaining to covenants and restrictions that will ensure that the project meets high standards for maintenance and management of the complex. These additional materials should be submitted for review before the Commission makes a recommendation to City Council on the rezoning request.

### RECOMMENDATION

Generally, staff feels that the proposal is consistent with many of the broader elements of the City’s long-term vision to attract more young professionals and empty-nesters to the City. The residential use of the property is compatible with the existing high-density multifamily use to the north as well as existing residential use to the east and south and the proposed residential development in Frederick County immediately to the west.

However, the proposed rezoning does reflect a deviation from the land use designation shown on the Character Map in the Comprehensive Plan. This is particularly a concern given the evolving land use pattern along Cedar Creek Grade which has non-residential development along the street with residential in behind it (e.g. The Landing at Park Place, Melco PUD, and the commercial office development opposite of Harvest Drive on the south side of Cedar Creek Grade). The proposed residential use toward the rear of the site and the proffered indirect extension of Stoneleigh Drive provides for a logical extension of the existing and proposed land uses in this specific segment of Cedar Creek Grade. The efforts to work joint access with the adjoining Horton property also represents good planning practice. Also, the effort by the applicant to situate the apartment buildings, at least 135 feet back from Cedar Creek Grade represents good planning, but the incorporation of some commercial development along Cedar Creek Grade would create better conformity with the ‘Commerce Revitalization/Infill’ designation shown in the Comprehensive Plan exhibit.

If the Commission wishes to make a favorable recommendation on **the entire request**, then a motion could read:



#### **MOTION#1A**

**MOVE**, that the Planning Commission forward Rezoning **RZ-12-405** to City Council recommending approval because the proposed HR (PUD/CE) zoning, as proffered, supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan. The recommendation is subject to adherence with the Proffer Statement updated **January 9, 2013** and the updated Development Plan titled ‘CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit “A”’ dated December 3, 2012.

If the Commission wishes to make a favorable recommendation on the request **except for the front portion** where City staff has recommended that 2 acres be left RO-1 or considered for rezoning to B-2(PUD) instead, then a motion could read:

#### **MOTION#1B**

**MOVE**, that the Planning Commission forward Rezoning **RZ-12-405** to City Council recommending approval to rezone the rear 5.75 acre portion of the tract because the proposed HR (PUD/CE) zoning, as proffered, supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan. The recommendation is subject to adherence with the Proffer Statement updated **January 9, 2013** and the updated Development Plan titled ‘CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit “A”’ dated December 3, 2012 except as to how it designates apartment development on the front two acres of the tract.

If the Commission wishes to make an unfavorable recommendation on the request, then a motion could read:

#### **MOTION#2**

**MOVE**, that the Planning Commission forward Rezoning **RZ-12-405** to City Council recommending disapproval because the proposed HR (PUD/CE) zoning is less desirable than the existing RO-1(CE) zoning, creates potential negative impacts associated with multifamily development, and is inconsistent with the adopted Comprehensive Plan that calls for Commerce Revitalization/Infill in this area of the City.

The Commission should not consider any further motions to table the request.

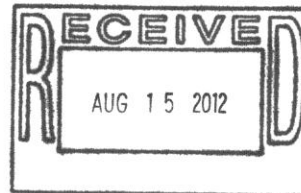
**Valley View Management, LLC**

817 Cedar Creek Grade, #200  
Winchester, Virginia 22601

Tel.: (540) 313-4364

August 15, 2012

Mr. Timothy P. Youmans, Director of Planning  
City of Winchester, Virginia  
15 N. Cameron Street  
Rouss City Hall  
Winchester, Virginia 22601



Re: Racy Meadows Apartment Complex  
940 Cedar Creek Grade  
Winchester, Virginia  
Tax Map: 249-01-2  
Rezoning Application: RZ-12-405

Dear Sir:

The Comprehensive Plan of the City of Winchester recommends that the area in and around the above-referenced project have an Residential Office District (RO-1) zoning. This district permits a combination of residential and light commercial uses.

This rezoning proposal is requesting that this parcel be rezoned to a High Density Residential (HR) with a Planned Unit Development District (PUD) overlay. This zoning would permit the use of multifamily residential. The RO-1 district specifically allows only the use of single-family residences. Even though this proposal varies from the existing zoning district, it does provide a similar type of housing to what exists on the adjacent property to the north and generally conforms to the use of mixed housing types in the area. The RO-1 district also promotes the use of light commercial developments and related service facilities. This proposal does not have a commercial element as part of the development, but instead proposes to install a recreational facility that will be transferred to the Winchester Parks and Recreation Department for public use. This type of facility is desired as part of the RO-1 district and we feel will be welcomed by the local residents and the tenants of this development to a much greater extent than a commercial use.

This proposal to develop the above-referenced project into an HR district with a multifamily use and a PUD overlay generally conforms to the Comprehensive Plan of the City of Winchester by allowing a varied residential use in this area and by providing a public park for the local residents. A commercial use on this property could have an adverse effect on the

Page 1

Mr. Timothy P. Youmans, Director of Planning  
City of Winchester, Virginia

August 15, 2012  
Rezoning Application: RZ-12-405

neighborhood due to its lighting, potential late night use, and noise generation. The provision for a public park, in lieu of a commercial element, can be controlled by the hours of permitted use and will generally serve all of the local residents by providing a recreational facility in their immediate area for convenience.

Thank you for your attention to this matter. If you would have any questions or would require further information please do not hesitate to contact me.

Sincerely,  
Valley View Management, LLC

A handwritten signature in cursive script, appearing to read "Robert A. Cocker".

Robert A. Cocker  
Manager

## LAWSON AND SILEK, P.L.C.

120 EXETER DRIVE, SUITE 200  
POST OFFICE BOX 2740  
WINCHESTER, VA 22604  
TELEPHONE: (540) 665-0050  
FACSIMILE: (540) 722-4051

THOMAS MOORE LAWSON • [TLAWSON@LSPLC.COM](mailto:TLAWSON@LSPLC.COM)

September 21, 2012

Tim Youmans, Planning Director  
City of Winchester  
Rouss City Hall  
15 North Cameron Street  
Winchester, VA 22601

Re: Racy Meadows Apartment Complex  
Rezoning Application: RZ-12-405  
Our File No. 890.007

### VIA E-MAIL

Dear Tim:

As you know as part of the above-referenced rezoning application submitted by Valley View Management LLC, there have been questions raised about the number of school children that are generated by apartment complexes in the City of Winchester. In response, our client has found that at its, and at other market-rate apartment complexes, the number of school children generated is very small, especially when compared to other apartment complexes in the City. To further confirm this understanding we have had conversations with Winchester Public Schools and obtained bus stop counts for the number of children being generated at various apartment complexes around the City. For your convenience, we enclose that information.

The net of this is that our client's understanding has been proved correct. We find this information to be very helpful and hopefully dispersive of any concerns about the number of school children being generated by market-rate apartment complexes. After you have reviewed this information please do not hesitate to give me a call with any questions. In the interim, I would ask that this be placed in the rezoning application file for consideration by members of Council.

Thank you for your attention to these matters. I look forward to working with you on this rezoning.

Very truly yours,

/s/ Thomas Moore Lawson

Thomas Moore Lawson

TML:sih

Enclosure

cc: Valley View Management LLC

FRONT ROYAL ADDRESS: POST OFFICE BOX 602, FRONT ROYAL, VIRGINIA 22630, TELEPHONE: (540) 635-9415 • FACSIMILE: (540) 635-9421 • E-MAIL: [JSILEK@LAWSONANDSILEK.COM](mailto:JSILEK@LAWSONANDSILEK.COM)

**Stuart Hill and Pemberton Village**

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-44	2	4
D-159	2	1
JH-62	12	4

**Summerfield**

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-35	1	1
D-154	0	1
JH-64	8	3

**2265 Wilson Boulevard**

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-47	11	12
D-108	9	10
D-109	4	4
JH-67	6	6

**Treetops Park**

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-28	0	0
D-184	0	0
JH-101	1	1

**York Terrace**

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-69	11	16
D-187	10	12
D-188	12	10
JH-102	20	30

**Peppertree Apartments and Orchard Crest Apartments**

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-30	22	25



F-31	27	27
D-104	0	0
D-105	1	2
D-106	12	24
D-107	12	10
JH-79	21	26

**Woodstock Terrace and Morgan Apartments**

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
Q-38	25	28
Q-27	23	23
Walking Zone for Daniel Morgan		
JH-31	25	38

### Trip Generation

Trip generation for the planned apartment complex was developed from the ITE Trip Generation Manual, 7<sup>th</sup> edition. The full build-out of the project is planned to occur by the year 2014. The resulting trips generated by the project are summarized as Scenario 3 in Table 1.

In addition to the trip generation resulting from the proposed project, several other potential development types were evaluated for comparison. These are also presented in Table 1.

Table 1 Trip Generation Comparisons

Scenario 1 - Developed under current  
RO-1 w/ single family detached  
dwellings

Land Use	ITE Code	Amount	AM Peak Hour			PM Peak Hour			Avg. Daily Trips
			In	Out	Total	In	Out	Total	
Residential - single family detached (27 units)	210	27	8	23	31	23	12	35	312
Total New Trips			8	23	31	23	12	35	312

Scenario 2 - Developed under HR  
zoning w/o PUD overlay

Land Use	ITE Code	Amount	AM Peak Hour			PM Peak Hour			Avg. Daily Trips
			In	Out	Total	In	Out	Total	
Apartments (108 units)	220	108	12	45	57	50	27	77	799
Total New Trips			12	45	57	50	27	77	799

Proposed Development

Scenario 3 - Developed under HR  
zoning with PUD overlay

Land Use	ITE Code	Amount	AM Peak Hour			PM Peak Hour			Avg. Daily Trips
			In	Out	Total	In	Out	Total	
Apartments (138 units)	220	138	15	57	71	61	33	94	980
Total New Trips			15	57	71	61	33	94	980

Scenario 4 - Developed under B-2  
zoning as Medical-Dental Offices

Land Use	ITE Code	Amount	AM Peak Hour			PM Peak Hour			Avg. Daily Trips
			In	Out	Total	In	Out	Total	
Medical-Dental Office Building (120,000 sq ft FAR = .35)	720	120	280	144	424	213	319	532	4,692
Total New Trips			280	144	424	213	319	532	4,692

To: Tim Youmans, Planning Director  
From: Jim Deskins, Director of Economic Redevelopment

Subject: Rezoning Application RZ-12-405

Date: 02/10/2013

As per your request I have reviewed Mr. Cocker's Fiscal Analysis concerning the above noted rezoning application. In my review I looked closely at his assumptions along with the immediate development patterns surrounding the subject site on Cedar Creek Grade. I provide the following comments:

- Mixed use development appears to be the dominant development pattern on the corridor
- That the development of all 7.75 acres as commercial, based on current absorption rates, could require as much as a twenty plus year period,
- and the financial projects provided by Mr. Cocker did not reflect city tax income other than property tax on his commercial tax revenue assumptions. An accurate assumption would reflect sales tax receipts and or BPOL revenues

I would suggest that a more accurate potential financial analysis would project that the property be developed as a mixed use parcel with approximately 2 acres as commercial and 5.75 acres as multifamily. It is my position that this would result in a project that is currently marketable and would generate more income to the city and the developer. By using the same assumptions provided by Mr. Cocker for the first phase of commercial development with the addition of sales tax and or BPOL revenue, I have projected that the 2-acre commercial project would generate revenue to the city in a range between \$43,205 and \$78,205. This new revenue projection is based on a range of BPOL and or sales tax generation of \$15,000-\$50,000. These numbers are based on gross sales of \$150 per square foot and/or \$300,000 in professional business transactions per 1000 square feet per year, in a 30,000 square foot facility. Reducing the total number of apartments to reflect the reduction of HR-zoned multifamily land from 7.75 to 5.75 acres could result in approximately 120 units rather than the projected 132 units. This assumes that the front 2 acres of commercial land would be rezoned from RO-1 to B-2 and could still contribute to the density computation.

Therefore, reducing the gross revenue to the city in property tax from the apartments to \$79,774.66; then applying Mr. Cocker's cost attributable to the potential increased enrollment in Winchester Public Schools (reduced proportionately by the reduction in units to be built), I would estimate that the total net revenue the city could anticipate would fall within a range \$37,331 to \$77,331 per year. This compares to the net revenue figure of \$22,331 per year estimated by Mr. Cocker for the 132-unit apartment development.

# REZONING EXHIBIT

**RZ-12-405**

PREPARED BY WINCHESTER PLANNING DEPARTMENT  
FEBRUARY 12, 2013



EXISTING

RO-1 (CE) ZONING FOR 940 CEDAR CREEK GRADE



PROPOSED

CONDITIONAL HR (PUD/CE) ZONING FOR 940 CEDAR CREEK GRADE